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## INSANITY AND CRIMINAL RESPONSIBILITY.

EDWIN R. KEEDY.

(Report of Committee B of the Institute.<sup>1</sup>)

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In order that intelligent proposals may be made for legislation regarding the determination of the question of insanity in criminal cases and the methods of dealing with accused or convicted persons found to be insane, it is necessary to know the statutory provisions of the different states on this subject. For this purpose a collection of such laws in all the states, including the District of Columbia, has been prepared by this committee. As these laws are very diverse and occur under such widely different titles, it is difficult to have the assurance that none have been overlooked, though a strong effort was made to include all except those which have but a remote connection with the subject or have been declared unconstitutional. The last revision or compilation of the statutes of each state and the session laws published since the death of such revision or compilation were consulted. The topics covered are the following: (1) *test of responsibility*, (2) *insanity at time of trial and method of determining this*, (3) *commitment therefor*, (4) *verdict of jury when accused person is found to have been insane at the time of the commission of the offense charged*, (5) *method of commitment in such case*, (6) *method of discharge from insane hospital*. The extent to which these topics have been included in the legislation of the different states varies greatly, in some instances being very meager. The sections of the statutes have been arranged in the order indicated above. The titles of the sections follow those of the statute books, except in cases where no such titles occur or are very long or misleading. In these cases titles have been supplied, and indicated by brackets.

### ALABAMA.

*Presumption in favor of sanity; burden and measure of proof of insanity.*—Every person over fourteen years of age charged with crime is presumed to be responsible for his acts, and the burden of proving that he is irresponsible is

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cast upon the accused. The defense of insanity in all criminal prosecutions shall be clearly proved to the reasonable satisfaction of the jury.—Criminal Code of 1907, sec. 7175.

*Insanity must be specially pleaded as a defense for crime.*—When the defense of insanity is set up in any criminal prosecution it must be by special plea, interposed at the time of arraignment and entered of record upon the docket of the court, which in substance shall be, "not guilty by reason of insanity." Such plea shall not preclude the usual plea of the general issue, which shall not, however, put in issue the question of the irresponsibility of the accused by reason of this alleged insanity, this question being triable only under the special plea.

*Verdict when special plea interposed.*—If it shall appear from the evidence that the defendant did the act charged as constituting the offense, but at the time of committing the act he was insane, the jury shall render a special verdict to the effect that the defendant is not guilty by reason of insanity; if the jury do not believe from the evidence that the defendant committed the act, or if they believe from the evidence that he is not guilty upon any other ground than his alleged insanity, they must return a general verdict of not guilty; otherwise, they must return a verdict of conviction.—Criminal Code of 1907, secs. 7176 and 7177.

*Court orders to hospital defendant acquitted on account of insanity.*—When a person has escaped indictment, or been acquitted of a criminal charge on the ground of insanity, the court, being informed by the jury, or otherwise, of the fact, must carefully inquire and ascertain whether his insanity in any degree continues, and, if it does, shall order him in safe custody, and to be sent to the hospital.

*Powers of county courts and justices in misdemeanors.*—Persons charged with misdemeanors, and acquitted on the ground of insanity, may be kept in custody and sent to the hospital in the same way as persons charged with crimes; and the county courts and justices of the peace shall have the same power in reference to persons charged before them with misdemeanors, as is bestowed upon the circuit courts in the two preceding sections.—Criminal Code of 1907, secs. 7181 and 7182.

*Inquisition in certain cases of felony; proceedings.*—If any person charged with any felony be held in confinement under indictment, and the trial court shall have reasonable ground to doubt his sanity, the trial of such person for such offense shall be suspended until the jury shall inquire into the fact of such sanity, such jury to be impaneled from the regular jurors in attendance for the week or from a special venire, as the court may direct. If the jury shall find the accused sane at the time of their verdict, they shall make no other inquiry, and the trial in chief shall proceed. If they find that he is insane at that time, the court shall make an order committing him to an insane hospital, where he must remain until he is restored to his right mind. When the superintendent of the hospital shall be of opinion that such person is so restored he shall forthwith, in writing, inform the judge and sheriff of such court of the fact, whereupon such person must be remanded to prison on an order of such judge, and the criminal proceedings resumed. In no event shall such person be set at large so long as such prosecution is pending, or so long as he continues to be insane.—Criminal Code of 1907, sec. 7178.

*Inquisition upon alleged insane prisoner; further proceedings.*—If any person in confinement, under indictment, or for want of bail for good behavior, or for keeping the peace, or appearing as a witness, or in consequence of any summary conviction, or by an order of any justice, appears to be insane, the judge of any court of record of the county where he is confined must institute a careful investigation, call a respectable physician and other credible witnesses, and, if he deems it necessary, may call a jury, and for that purpose he is empowered to compel attendance of witnesses and jurors; and if it be satisfactorily proved that the person is insane, the judge may discharge him from imprisonment and order his safe custody and removal to the hospital, where he must remain until restored to his right mind; and then, if the judge shall have so directed, the superintendent must inform the judge and sheriff, whereupon the person must

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be remanded to prison, and criminal proceedings be resumed, or he be otherwise discharged.—Criminal Code of 1907, sec. 7180.

*Habeas Corpus for the release of insane persons confined.*—Any person confined as insane may prosecute a writ of *habeas corpus* as provided in this chapter; and if the judge, or the jury, when the petitioner demands the issues arising to be tried by a jury, shall decide at the hearing that the person is insane, such decision does not bar a second application alleging that such person has been restored to sanity.—Criminal Code of 1907, sec. 7009.

## ARIZONA.

Sections 1147-1153 of the Penal Code of 1901, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Acquittal on ground of insanity.*—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the territorial insane asylum. If the jury find the defendant sane, he must be discharged.—Penal Code of 1901, sec. 982.

## ARKANSAS.

*Persons capable of committing crimes.*—A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged.

A person who becomes insane or lunatic after the commission of a crime or misdemeanor shall not be tried for the offense during the insanity or lunacy.

A person shall be considered of sound mind who is neither an idiot or a lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.—Kirby's Digest of the Stat., 1904, secs. 1550-1552.

*[Insanity at time of trial.]*—If the court shall be of the opinion that there are reasonable grounds to believe that the defendant is insane, all proceedings in the trial shall be postponed until the jury be impaneled to inquire whether the defendant is of unsound mind, and if the jury shall find that he is of unsound mind the court shall direct that he be kept in prison, or conveyed by the sheriff to the lunatic asylum, and there kept in custody by the officers thereof until he is restored, when he shall be returned to the sheriff, on demand, to be reconveyed by him to the jail of the county.—Kirby's Digest of the Stat., 1904, sec. 2277.

*Verdict when acquitted for insanity.*—If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict.—Kirby's Digest of the Stat., 1904, sec. 2418.

*[Admission to Asylum.]*—Any person admitted to the said asylum under the provisions of this act, shall be there and then kept until restored to reason, which shall be ascertained as in case of other insane persons in said asylum.

*How discharged.*—When any person confined in said asylum under the provisions of this act shall be ascertained to be restored to reason, it shall be the duty of the said superintendent to give notice thereof to the sheriff of the county in which the indictment or presentment against such person is pending, and said sheriff shall forthwith proceed to said asylum and take such person into his custody, and convey him to the jail of said county, or hold him in custody until admitted to bail or otherwise discharged according to law.—Kirby's Digest of the Stat., 1904, secs. 4206 and 4207.

*Classification of insane persons.*—All persons found to be insane, for whom application for admission to the state insane asylum shall be made in compliance with the provisions of this chapter, shall be classified as "acute," "chronic,"

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"probably incurable," or "incurable," such classifications to be determined by the duration of the disease and such complications as are known to render recovery doubtful or impossible. All cases of less than one year's duration from first recognized symptoms of insanity, shall be classified as "acute;" all cases over one year's duration shall be classified as "chronic;" all cases complicated with epilepsy, original imbecility or feeble mindedness, deformities of skull from injuries, old age or general paralysis, shall be classified as "probably incurable;" and all other cases shall be classified as "incurable;" provided, that no person of either classification, whether curable or not, and whether the imbecility or insanity be idiotic or congenital or not, shall be refused admission as long as there is unoccupied room for patients in the asylum.—Kirby's Digest of the Stat., 1904, sec. 4209.

### CALIFORNIA.

*Insane persons cannot be tried or punished.*—A person cannot be tried, adjudged to punishment, or punished for a public offense while he is insane.

*Doubts as to sanity of defendant; how determined.*—When an action is called for trial, or at any time during the trial, or when the defendant is brought up for judgment on conviction, if a doubt arise as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity.

*Order of trial of question of insanity.*—The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case, and offer evidence in support of the allegation of insanity;

2. The counsel for the people may then open their case and offer evidence in support thereof;

3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause;

4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury;

5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately; in other cases the argument may be restricted to one counsel on each side;

6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

*Verdict of the jury as to sanity, and proceedings thereon.*—If the jury finds the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be. If the jury finds the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the meantime committed by the sheriff to a state hospital for the care and treatment of the insane, and that upon his becoming sane he be redelivered to the sheriff.

*If defendant is committed, it exonerates bail.*—The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

*Defendant detained in asylum until sane.*—If the defendant is received into the state hospital he must be detained there until he becomes sane. When he becomes sane, the superintendent must certify that fact to the sheriff and district attorney of the county. The sheriff must thereupon, without delay, bring the defendant from the state hospital and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.—Annotated Penal Code, 1901, secs. 1367-1372.

*Proceedings on acquittal on ground of insanity.*—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be

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summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.—Supplement to Annotated Penal Code, 1902, sec. 1167, p. 41.

### COLORADO.

*Lunatics; not to be convicted for act when insane.*—A lunatic or insane person without lucid intervals shall not be found guilty of any crime or misdemeanor with which he may be charged; *provided*, the act so charged as criminal shall have been committed in the condition of insanity.

*Idiot not guilty.*—An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.—Revised Statutes, 1908, secs. 1612-1613.

*Notice of inquest by citation; inquest of lunatic charged with crime.*—No inquest shall be had as to the lunacy of any person charged with a criminal offense until a like notice has been given to the district attorney or other officer charged by law to prosecute such offense.—Revised Statutes, 1908, sec. 4128 (portion of section).

*Lunacy after crime committed; after judgment; inquest.*—A person that becomes lunatic or insane after the commission of a crime or misdemeanor ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty and before judgment pronounced, such person becomes lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue, and if after judgment and before execution of the sentence, such person becomes lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the insanity or lunacy. In all these cases it shall be the duty of the court to impanel a jury to try the question whether the accused be at the time of impaneling insane or lunatic.—Revised Statutes of 1908, sec. 1614.

*Discharge of person restored to reason.*—If any person confined in the state insane asylum shall be restored to reason, the superintendent thereof shall discharge such person from said confinement and shall forthwith transmit to the judge of the county court, by which said patient was adjudged insane, a notice in writing setting forth that such lunatic or insane person has been restored to reason, and has been discharged and the said superintendent shall have the further power to issue a probationary discharge whenever he believes the same to be for the best interest of any patient, under his control.—Revised Statutes, 1908, sec. 4130 (portion of section).

### CONNECTICUT.

*Examination of accused who appear to be insane.*—When any person committed for trial to the county jail on binding over process, bench warrant, or appeal, shall, at the time of such commitment, or thereafter and before trial, appear to be insane, the sheriff of the county in which said jail is located may make application to a judge of the superior court, and, after hearing upon said application, notice of said hearing having been given to the state's attorney, said judge may, if it appear to him to be advisable, appoint three reputable physicians to examine as to the mental condition of the person so committed; and upon the return to said judge of a certificate by said physicians, stating the insanity of said person, said sheriff shall, upon the order of said judge, transfer said person so committed to the Connecticut hospital for the insane at Middletown, in this state, for confinement, support, and treatment, until the time of his trial. The expense of such examination, confinement, support, and treatment, shall be taxed as a part of the costs in the prosecution against said person, and paid as costs in criminal prosecutions in the superior court.

*Disposition of accused acquitted on the ground of insanity.*—Any superior

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court, criminal court of common pleas, city court, or police court in this state, before which any person shall be tried on any criminal charge, and acquitted on the ground of insanity or dementia, may order such person to be confined in the Connecticut hospital for the insane for such time as such court shall direct, unless some person shall undertake before said court, and give bond to the state conditioned, to confine such person in such manner as such court shall order; and said court shall appoint an overseer to such person, if he have any estate, with the same powers and duties as conservators appointed by courts of probate, such overseer giving suitable bond to the state, conditioned for the faithful performance of his trust; and if such person have no estate, and belongs to any town in this state, the expense of his confinement, support, and treatment shall be paid by such town and the state, in the same manner as is by law provided in the case of pauper patients committed by courts of probate; and if such person have no estate and does not belong to any town in this state, such expense shall be paid by the state.

*Release of person sentenced under preceding section.*—Any person who has been tried on any criminal charge, and acquitted on the ground of insanity or dementia, and confined in the Connecticut hospital for the insane, may petition, or the officers of said institution may petition, the superior court of the county in which he is confined for his enlargement, and the petition shall be served like civil process on the selectmen of the town to which he belongs, and upon the person, if any, upon whom the offense was charged to have been committed, and upon the state's attorney of the county in which the trial was had, and said court shall make such order as to his disposal as it shall deem proper, and said state's attorney shall appear and represent the state on such application; and if such person so confined shall be unable to defray the expenses of said petition, the court before which the same is heard may tax the same against the state as in criminal cases.

*Disposition of insane person upon expiration of term.*—When any person shall have been tried on any criminal charge and acquitted on the ground of insanity or dementia, and shall have been confined in the Connecticut hospital for the insane for any specific term by the order of the court before which such trial was had, and shall, at the expiration of such term, still be suffering from insanity or dementia, the superintendent of said hospital shall certify said facts to the state's attorney for the county wherein such trial was had, and said state's attorney shall thereupon procure from said court, and said court is hereby authorized and empowered to issue an order for the further confinement of such person in said hospital until he recovers from such insanity or dementia, and the clerk of said court shall thereupon transmit to said superintendent a new warrant of commitment based upon said order; the expense of such further confinement, support, and treatment shall be paid out of the estate of such insane person, or, if he have no estate, such expense shall be paid by the town of which such person belongs; and if he belongs to no town in this state such expense shall be paid by the state.—General Statutes (Revision of 1902), secs. 1472-1475.

*Petition for release of person acquitted as insane.*—Any person who has been tried on any criminal charge, and acquitted on the ground of insanity or dementia, and confined in the Connecticut hospital for the insane, may petition, or the officers of said institution may petition, the superior court of the county in which he is confined for his release, and the petition shall be served like civil process on the selectmen of the town to which he belongs, and upon the person, if any, upon whom the offense was charged to have been committed, and upon the state's attorney of the county in which the trial was had, and said court shall make such order as to his disposal as it shall deem proper; and said state's attorney shall appear and be heard on such application, and if such person so confined shall be unable to defray the expenses of such petition, the court before which the same is heard may tax the expenses of such petition against the state, as in criminal cases.—General Statutes, 1902, sec. 2780.

*Insane persons entitled to writ of habeas corpus.*—All insane persons confined in an asylum in this state shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be determined by the court

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or judge issuing such writ, and, if the court or judge before whom such case is brought shall decide that the person is insane, such decision shall be no bar to the issuing of such writ a second time, if it shall be claimed that such person has been restored to reason. Said writ may be applied for by said insane person or on his behalf by any relative, friend, or person interested in his welfare.

*Persons charged with crime not affected.*—The foregoing provisions of this title shall not extend to nor affect in any way the cases of persons convicted of or charged with crime.—General Statutes (Revision of 1902), secs. 2760-2761.

## DELAWARE

*An act in relation to insane persons.*—If upon the trial of any person upon any indictment in the court of oyer and terminer, or in the court of general sessions of the peace and jail delivery of this state, the defense of insanity shall be made and established to the satisfaction of the jury empaneled on said trial, and the fact charged shall be proved, it shall be the duty of the jury to return a verdict of "not guilty by reason of insanity," and upon the rendition of such verdict, the court before which the issue shall have been tried may, upon motion of the attorney-general, order that the person so acquitted shall forthwith be committed by the sheriff to the keeper of the almshouse of the county wherein the case was tried, or of the county of the residence of said insane person; or the court may order such person to be placed at any lunatic asylum or institution for insane persons in the United States. For this purpose the said court may appoint a trustee, whose duty it shall be to contract with any such asylum or institution for the admission and support of such insane person. The expenses of the removal of such insane person, and of his admission into and support at such asylum or institution, shall be borne by the trustee of the poor of the county where the act charged was committed, or of the county of such insane person's residence; but if any such insane person shall have any real or personal estate, said trustee of the poor may have for the expenses and charges so incurred as aforesaid, the same remedy as is provided in section 22, of chapter 48, of the Revised Statutes of this State in the case of insane persons supported in the county almshouse.

The court of general sessions of the peace and jail delivery of the county wherein such case shall have been tried may order that such insane person charged and acquitted as aforesaid shall be set at large whenever they shall be satisfied that the public safety will not be thereby endangered, or may order such person to be removed from any such asylum or institution to the almshouse of the county where he resided at the time of the commission of the act charged in the indictment, or of the county where the act charged was committed.—Revised Code of 1852 as amended 1893, chap. 397.

## DISTRICT OF COLUMBIA

*Insane criminals.*—When any person tried upon an indictment or information for an offense is acquitted on the sole ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict; and whenever a person is indicted or is charged by an information for an offense and before trial or after a verdict of guilty *prima facie* evidence is submitted to the court that the accused is then insane, the court may cause a jury to be impaneled from the jurors then in attendance on the court or, if the regular jurors have been discharged, may cause a sufficient number of jurors to be drawn to inquire into the insanity of the accused, and said inquiry shall be conducted in the presence and under the direction of the court. If the jury shall find the accused to be then insane, or if an accused person shall be acquitted by the jury solely on the ground of insanity, the court may certify the fact to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in said hospital. The person whose sanity is in question shall be entitled to his bill of exceptions and an appeal, as in other cases.—Code of Law, 1910, sec. 927.



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### FLORIDA

*Acquitted for cause of insanity.*—When a person tried for an offense shall be acquitted by the jury for the cause of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause, and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the people, the court shall order him to be committed to jail or otherwise to be cared for as an insane person, or may give him into the care of his friends, on their giving satisfactory security for the proper care and protection of such person; otherwise he shall be discharged.—General Statutes of 1906, sec. 3992.

### GEORGIA

*Persons who are considered of sound mind.*—A person shall be considered of sound mind who is neither an idiot, a lunatic, nor afflicted by insanity, or who has arrived at the age of fourteen years, or before that age if such person know the distinction between good and evil.—Code of 1911, vol. ii, sec. 33.

*Lunatics.*—A lunatic or person insane, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: Provided, the act so charged as criminal was committed in the condition of such lunacy or insanity; but if a lunatic has lucid intervals of understanding, he shall answer for what he does in those intervals as if he had no deficiency.—Code of 1911, vol. ii, sec. 35.

*Insanity at trial.*—No lunatic, or person afflicted with insanity, shall be tried, or put upon his trial, for any offense during the time he is afflicted with such lunacy or insanity, which shall be tried in the manner hereinbefore pointed where the plea of insanity at the time of trial is filed, and, on being found true, the prisoner shall be disposed of in like manner.—Code of 1911, vol. ii, sec. 978.

*Plea of insanity, how tried.*—Whenever the plea of insanity is filed, it shall be the duty of the court to cause the issue on that plea to be first tried by a special jury, and if found to be true, the court shall order the defendant to be delivered to the superintendent of the sanitarium, there to remain until discharged in the manner prescribed by law.

*Criminals acquitted, how dealt with.*—When a person who has been acquitted of a capital crime, on the ground of insanity, is committed to the sanitarium, he shall not be discharged thence, except by special act of the legislature. If the crime is not capital, he shall be discharged by warrant or order from the governor. If sentence is suspended on the ground of insanity, upon restoration to sanity the superintendent shall certify the fact to the presiding judge of the court where he was convicted.—Code of 1911, vol. ii, secs. 976 and 977.

### IDAHO

Sections 8194-8200 of the Revised Code, 1908, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Forms of general verdict.*—When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity."—Revised Code of 1908, sec. 7919 (portion of section).

*Acquittal for insanity—commitment to asylum.*—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the prosecuting attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.—Revised Code of 1908, sec. 7934.

ILLINOIS

*Insanity.*—A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: *Provided*, the act so charged as criminal shall have been committed in the condition of insanity.—Revised Statutes, 1909, chap. 38, part of sec. 284.

*Becoming insane.*—A person that becomes lunatic or insane after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the lunacy or insanity. If, after the verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all of these cases, it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of impaneling, insane or lunatic.—Revised Statutes, 1909, ch. 38, sec. 285.

*Verdict and commitment.*—If, upon the trial of a person charged with crime, it shall appear from the evidence that the act was committed as charged, but that, at the time of committing the same, the person so charged was lunatic or insane, the jury shall so find by their verdict, and by their verdict shall further find whether such person has or has not entirely and permanently recovered from such lunacy or insanity; and in case the jury shall find such person has not entirely and permanently recovered from such lunacy or insanity, the court shall cause such person to be taken to a state hospital for the insane, and there kept in safety until he shall have fully and permanently recovered from such lunacy or insanity; but in case the jury shall find by their verdict that such person has entirely and permanently recovered from such lunacy or insanity, he shall be discharged from custody.—Revised Statutes, 1909, chap. 38, part of sec. 284.

*Judge may order insane murderer, etc., to the asylum.*—At any time after the said Illinois asylum for insane criminals shall be opened, for the reception of patients, when a person shall be acquitted on trial of the crime of murder, attempt at murder, rape, attempt at rape, highway robbery or arson, on the ground of insanity, the judge of the court in which such trial is had shall order his safe custody and removal to such asylum, where he shall remain until restored to his right mind and be adjudged by the medical superintendent thereof, and the board of commissioners of public charities a fit subject to be discharged.—Revised Statutes, 1909, chap. 23, sec. 87.

*Entitled to habeas corpus.*—Every person confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing, and if the judge shall decide that the person is insane such decision shall be no bar to the issuing of the writ a second time whenever it shall be alleged that such person has been restored to reason; and if said person shall be adjudged sane, on presentation of a certified copy of said judgment to the county court where the inquest was had, such court shall rescind and set aside the judgment of insanity.—Revised Statutes, 1909, ch. 85, sec. 24.

*Not to apply to persons in custody on criminal charge.*—Nothing in this act shall be construed to apply to insane persons, or persons supposed to be insane, who are in custody on a criminal charge.—Revised Statutes, 1909, ch. 85, sec. 30.

INDIANA

*Insanity defense—sentence.*—After the passage of this act, if upon the trial of any male person accused of a felony the defense of insanity is interposed, whether upon a special plea or a general plea of not guilty, the court or jury trying said cause shall make a finding both as to the sanity of said defendant at the time so claimed and as to whether he committed the act as charged. And if it shall be found in favor of said defendant on such plea of insanity but against him as to the commission of the act as charged, he shall upon order of the court be committed to and confined in the Indiana colony for the insane criminals in like manner and on such conditions and for such terms as is now

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provided for by law for the confinement of insane criminals in a state hospital for the insane.—Acts of 1909, chap. 87, sec. 16½.

[*Habeas corpus*].—*Who may have writ*.—Every person restrained of his liberty under any pretense whatever, may prosecute a writ of *habeas corpus*, to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.—Burns' Revised Statutes, 1901, sec. 1120.

*Habeas corpus*.—Any person committed as insane may apply to the proper authorities for a writ of *habeas corpus*, and the question of insanity shall be decided at the hearing. An adverse decision shall not operate as a bar to the issuance of another writ: *Provided, however*, That writs of *habeas corpus* shall not issue oftener than once in every period of three months in such cases.—Burns' Revised Statutes, 1901, sec. 3239.

### IOWA

*Proceedings suspended*.—If a defendant appears in any stage of the trial of a criminal prosecution, and a reasonable doubt arises as to his sanity, further proceedings must be suspended and a trial had upon that question.

*Trial*.—Such trial shall be conducted in all respects, so far as may be, as the prosecution itself would be, except the defendant shall hold the burden of proof, and first offer his evidence and have the opening and closing argument.

*Discharge or commitment*.—If the accused shall be found insane, no further proceedings shall be taken under the indictment until his reason is restored, and, if his discharge will endanger the public peace or safety, the court must order him committed to the department for the criminal insane at Anamosa until he becomes sane; but if found sane, the trial upon the indictment shall proceed, and the question of the then insanity of the accused cannot be raised therein.

*Return to custody*.—If the accused is committed to the department for the criminal insane, as soon as he becomes mentally restored, the person in charge shall at once give notice to the sheriff and county attorney of the proper county of such fact, and the sheriff, without delay, must receive and hold him in custody until he is brought to trial or judgment, as the case may be, or is legally discharged, the expense for conveying and returning him or any other, to be paid in the first instance by the county from which he is sent, but such county may recover the same from his estate, or a relative, or another county or municipal body bound to provide for or maintain him elsewhere, and the sheriff shall be allowed for his services the same fees as are allowed for conveying convicts to the penitentiary.—Code of 1897, secs. 5540-5543.

*Acquittal on ground of insanity*.—If the defense is insanity of the defendant, the jury must be instructed, if it acquits him on that ground, to state that fact in its verdict. The court may thereupon, if the defendant is in custody, and his discharge is found to be dangerous to the public peace and safety, order him committed to the insane hospital, or retained in custody, until he becomes sane.—Code of 1897, sec. 5414.

*Discharge from hospital*.—On the application of the relations or immediate friends of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of the county where such patient belongs, on making provisions for the care of such patient within the county as in other cases, may authorize his discharge therefrom; but no patient who may be under criminal charge or conviction shall be discharged without the order of the district court or judge, and notice to the county attorney of the proper county.—Code of 1897, sec. 2276.

*Habeas corpus*.—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing. If the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason.—Code of 1897, sec. 2360.

### KANSAS

*Insanity at time of trial*.—Whenever any person under indictment or infor-

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mation, and before or during the trial thereon, and before verdict is rendered, shall be found by the court in which such indictment or information is filed, or by a commission or another jury empaneled for the purpose of trying such question, to be insane, an idiot or an imbecile and unable to comprehend his position, and to make his defense, the court shall forthwith commit him to the state asylum for the dangerous insane for safe keeping and treatment; and such person shall be received and cared for at the said institution until he shall recover, when he shall be returned to the court from which he was received to be placed on trial upon said indictment or information.—Laws of Kansas, 1911, c. 299, s. 4.

*Insanity at time of commission of wrongful act.*—Whenever during the trial of any person on an indictment, or information, and evidence is introduced to prove that he was insane, an idiot or imbecile or of unsound mind at the time of the commission of the offense and such person shall be found to have been at the date of the offense alleged in said indictment or information, insane, an idiot, or an imbecile, and is acquitted on that ground, the jury or the court, as the case may be, shall so state in the verdict and in said case it shall be the duty of the jury to pass specially on the question of the sanity of the defendant, and the court shall thereupon, forthwith commit such person to the state asylum for the dangerous insane for safe keeping and treatment, and such person shall be received and cared for at said institution. No such person so acquitted shall be liberated therefrom, except upon the order of the court committing him thereto and until the superintendent of the said asylum for the dangerous insane shall certify in writing to such committing court that in his opinion such person is wholly recovered and that no person will be in danger by his discharge.—Laws of Kansas, 1911, c. 299, s. 5.

## KENTUCKY

*Trial of sanity of defendant—proceedings if insane.*—If the court shall be of opinion that there are reasonable grounds to believe that the defendant is insane, all proceedings in the trial shall be postponed until a jury be impaneled to inquire whether the defendant is of unsound mind, and if the jury find that he is of unsound mind, the court shall direct that he be kept in prison or conveyed by the sheriff to the nearest lunatic asylum, and there kept in custody by the officers thereof until he be restored, when he shall be returned to the sheriff on demand, to be reconveyed by him to the jail of the county.—Criminal Code of Practice, 1900, s. 156.

*Verdict and proceedings on plea of insanity.*—If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict, and thereupon if the court, after hearing any testimony offered by the commonwealth or the defendant, be satisfied that he is insane at the time the verdict is rendered, it may order him to be taken to a lunatic asylum.—Criminal Code of Practice, 1900, s. 268.

NOTE: "Asylum" as a term of designation for institutions for the care of the insane has been changed to "hospital."—Acts of 1912, c. 85.

## LOUISIANA.

*Plea of insanity.*—Whenever insanity shall be relied upon either as a defense or as a reason for defendant's not being presently tried, such insanity shall be set up as a separate and special plea, and shall be filed, tried and disposed of prior to any trial of the plea of not guilty, and no evidence of insanity shall be admissible upon the trial of the plea of not guilty.

[*Report of commission.*].—Whenever any plea of insanity shall have been filed, the presiding judge shall at once notify in writing the coroner of the parish, the superintendent of the insane asylum at Jackson, and the superintendent of the insane asylum at Pineville. The said coroner and the said superintendents shall together form a commission of lunacy to inquire into the sanity of accused; provided that each of said superintendents may designate and require to act in his place on said commission any physician in the regular employ of the asylum. The commissioners, as soon as practicable after said notification, shall meet at the parish-seat, and proceed with the investigation into the sanity of the accused, and, for that purpose, shall have the right of

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free access to him at all reasonable times and shall have full power and authority to summon witnesses and to enforce their attendance. The findings of the commission or of a majority of its members shall, upon being filed in court, constitute the report of the commission of lunacy. If said report be that the accused is presently insane, or was insane at the time of the commission of the crime, he shall forthwith be committed to the asylum for the criminal insane, there to remain until discharged in due course of law. But if the report be that the accused is presently sane and was sane at the time of the commission of the crime, the trial of the plea of insanity shall be proceeded with as provided in this chapter. The commissioners shall serve without pay, but all the expenses incurred by them and all costs of conducting said investigation shall be paid by the parish and taxed as costs, in the same way as other criminal expenses.

[*Trial of plea*].—Every plea of insanity shall be triable by the judge without a jury, or by a jury of five, or by a jury of twelve, according as the charge in the indictment is triable, and the same number of jurors concurring shall be necessary to the finding of a verdict on this plea as would be necessary to a verdict on the charge in the indictment.

[*Finding and commitment*].—If upon the trial of the plea of present insanity the judge or the jury, as the case may be, shall find that the defendant is presently sane, he shall be committed to an asylum for the criminal insane, there to await trial until such time as his reason shall have been restored; provided that the district attorney having charge of the prosecution, whenever he believes the defendant no longer insane, may have the question of insanity again determined in the same manner in which it was originally determined.

[*Finding and Commitment*].—If upon the trial of the plea of insanity as a defense, the judge or the jury, as the case may be, shall find that the defendant was insane at the time of the commission of the crime, he shall be committed to an asylum for the criminal insane, there to remain until discharged in due course of law; provided that no person committed under the provisions of this Article shall be released otherwise than as pointed out in the next succeeding Article.

[*Discharge from asylum*].—Whenever it shall be alleged that any person committed to an asylum for the criminal insane, because insane at the time of the commission of the crime, has regained his reason, a rule to show why such person should not be released from said asylum shall be taken upon and tried contradictorily with the district attorney of the parish from which such person shall have been committed, which rule shall be tried by the judge, or by a jury of five, or by a jury of twelve, according as the charge in the indictment is triable, and the same number of jurors shall be necessary to the finding of sanity as would be necessary to a verdict on the charge in the indictment.

[*Review*].—No ruling of the court made on the trial of any plea of insanity shall, before sentence, be reviewable by any other court, either under its appellate or supervisory powers.—Proposed Code of Criminal Procedure, 1910, Arts. 292-298.

*Authority of courts, when insanity is pleaded*.—Whenever any person arrested to answer for any crime or misdemeanor, before any court of this state, shall be acquitted thereof by the jury, or shall not be indicted by the grand jury, by reason of the insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the court to be dangerous to the safety of the citizens or to the peace of the state, the court is authorized and empowered to commit such person to the State Insane Hospital or any similar institution in any parish within the jurisdiction of the court, there to be detained until he be restored to his right mind, or otherwise delivered by due course of law.

[*Duty of jury, when insanity is reason for acquittal*].—Whenever the jury, upon general issue of not guilty, shall acquit any person for the cause aforesaid, it shall be their duty, in giving their verdict of not guilty, to state that it was for such cause.—Revised Statutes, 1904, secs. 993 and 995.

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### MAINE.

*When a person, committed to a jail on a criminal charge pleads insanity, proceedings.*—When a person is indicted for an offense, or is committed to jail on a charge thereof by a trial justice, or judge of a police or municipal court, any justice of the court before which he is to be tried, if a plea of insanity is made in court, or he is notified that it will be made, may, in vacation or term time, order such person into the care of the superintendent of either insane hospital, to be detained and observed by him until further order of court, that the truth or falsity of the plea may be ascertained. The superintendent of the hospital to which such person is committed shall, within the first three days of the term next after such commitment and within the first three days of each subsequent term so long as such person remains in his care, report to the judge of the court before which such person is to be tried, whether his longer detention is required for purposes of observation.

*When grand jury omit to indict, or traverse jury acquit, on account of insanity of the accused, they shall so certify to court—how court shall dispose of such accused.*—When the grand jury omit to find an indictment against any person arrested to answer for an offense, by reason of his insanity, they shall certify that fact to the court; and when a traverse jury, for the same reason, acquit any person indicted, they shall state that fact to the court when they return their verdict; and the court, by a precept stating the fact of insanity, may commit him to the insane department of the state prison or to either insane hospital; and any person so committed shall be discharged by the court having jurisdiction of the case only on satisfactory proof that his discharge will not endanger the peace and safety of the community; and when such person so discharged is on satisfactory proof again found insane and dangerous, any justice of the supreme judicial court may, by a precept stating the fact of his insanity, recommit him to the insane department of the state prison, or to either insane hospital.

*How, and by whom, such person, so committed to the hospital, may be discharged—bond.*—Any person so committed to an insane hospital may be discharged by any justice of the supreme judicial court, in term time or vacation, on satisfactory proof that his discharge will not endanger the peace and safety of the community; or such justice may, on application, commit him to the custody of any friend who will give bond to the judge of probate for the county of Kennebec, if such commitment was to the insane hospital at Augusta, or to the judge of probate for the county of Penobscot, if such commitment was to the insane hospital at Bangor, with sufficient sureties, approved by said judge of probate, conditioned for the safe keeping of such insane person, and the payment of all damages which any person may sustain by his acts. And when, on satisfactory proof, he is again found insane and dangerous, any justice of the supreme judicial court may, by a precept stating the fact of his insanity, recommit him to the insane hospital from which he was discharged.

*Support at hospital.*—The person so committed shall be there supported at his own expense, if he has sufficient means; otherwise, at the expense of the state.—Revised Statutes, 1903, c. 138, secs. 1-4.

*Inmates of jails and persons under indictment may be committed to insane hospital.*—Any inmates of county jails and persons under indictment becoming insane before final conviction may be committed to either insane hospital by any judge of the supreme judicial court, or judge of the superior court in the county where such person is to be tried, or the case is pending for observation, under such limitations as such judge may direct.—Laws of 1905, c. 104, sec. 8.

### MARYLAND.

*[Verdict in case of plea of insanity].*—When any person indicted for a crime or misdemeanor shall allege insanity or lunacy in his defense, the jury impanelled to try such person shall find by their verdict whether such person was, at the time of the commission of the offense, or still is insane, lunatic, or otherwise.

*[Commitment].*—If the jury find by their verdict that such person was at the time of committing the offense and then is insane or lunatic, the court

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before which trial was had shall cause such person to be sent to the almshouse of the county or city in which such person resided at the time of the commission of such act, or to a hospital, or some other place better suited in the judgment of the court to the condition of such prisoner, there to be confined until he shall have recovered his reason and be discharged by due course of law. And any judge of the circuit court for any county where such person is detained or of the supreme bench of Baltimore city, as the case may be, may, upon *habeas corpus* proceedings, make any order, absolute or conditional, for the permanent or temporary discharge of the person upon satisfactory proof of permanent or temporary recovery.

[*Commitment when no indictment found*].—Where any person arrested for improper or disorderly conduct, or charged with any crime, offense or misdemeanor against whom no indictment has been found shall appear to the court or be alleged to be a lunatic or insane, the court shall cause a jury of twelve good and lawful men to be impanelled forthwith and shall charge said jury to inquire whether such person was at the time of the commission of the act complained of insane or lunatic and still is so; and if such jury shall find such person was, at the time of the commission of such act insane or lunatic and still is so, the court shall direct such person to be confined, as directed in the preceding section, at the expense of the county or city, as the case may be, until he shall have recovered and be discharged by due course of law.—Annotated Code, 1911, art. 59, secs. 4-6.

[*Release on habeas corpus at instance of lunacy commission*].—If in their judgment any person confined in any institution in this state as insane be not insane, the commission may, at any time, bring the matter to the attention of the state's attorney of Baltimore city, or the state's attorney of any of the respective counties of the state, whose duty it shall be to apply to the proper tribunal for the writ of *habeas corpus*, to the end that proper inquiry and investigation may be had at once as to the mental condition of such person; and if the court shall be of the opinion that such person is not insane, then the court shall discharge such person; but if the court shall determine that such person is insane, then the court shall order that such person be returned to the institution from which he has been taken under said writ of *habeas corpus*.—Annotated Code, 1911, art. 59, sec. 20.

## MASSACHUSETTS.

*Commitment of persons under indictment to a state insane hospital*.—If a person under complaint or indictment for any crime is, at the time appointed for trial or sentence, or at any time prior thereto, found by the court to be insane or in such mental condition that his commitment to a hospital for the insane is necessary for the proper care or observation of such person pending the determination of his insanity, the court may commit him to a state hospital for the insane under such limitations as it may order. The court may, in its discretion, employ one or more experts in insanity, or other physicians qualified as provided in section thirty-two, to examine the defendant, and all reasonable expenses incurred shall be audited and paid as in the case of other court expenses. A copy of the complaint or indictment and of the medical certificates attested by the clerk shall be delivered with such person in accordance with the provisions of the said section. If a person so removed is in the opinion of the trustees and superintendent of the hospital restored to sanity, he shall forthwith be returned to the jail or custody from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed or confined.

*Commitment of person acquitted of murder, etc., by reason of insanity*.—If a person who is indicted for murder or manslaughter is acquitted by the jury by reason of insanity, the court shall order him to be committed to a state hospital for the insane during his natural life, and he may be discharged therefrom by the governor, with the advice and consent of the council, when he is satisfied after an investigation by the state board of insanity that such person may be discharged without danger to others.—Acts of 1909, chap. 504, secs. 103 and 104.

## MICHIGAN.

[*Accused person found insane by grand jury*].—When any person held in prison on a charge of having committed an indictable offense, shall not be indicted by the grand jury by reason of insanity, such jury shall certify that fact for such cause; and thereupon, if the discharge or going at large of such insane person shall be deemed manifestly dangerous to the peace and safety of the community, the court may order him to be retained in prison until the further order of the court, otherwise he shall be discharged.—Compiled Laws, 1897, sec. 11895.

*When prisoner acquitted by reason of insanity*.—When any prisoner indicted for an offense shall, on trial, be acquitted by the jury by reason of insanity, the jury in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, there to be kept until the further order of the court; otherwise he shall be discharged.—Compiled Laws, 1897, sec. 11953.

*When court may order persons sent to state asylum*.—When a person accused of the crime of murder, attempt at murder, rape, attempt at rape, incest, abduction, highway robbery or arson, or attempt to do great bodily harm, shall appear to be insane, or shall have escaped indictment upon the grounds of insanity or shall have been acquitted upon trial upon the grounds of insanity, the court, being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his insanity in any degree continues, and if it does, shall order such person into safe custody and to be sent to the state asylum. If any person in confinement under indictment for the crime of arson, or murder, or attempt at murder, rape, or attempt at rape, or incest, or abduction, or highway robbery, or assault to do great bodily harm, shall appear to be insane, the judge of the circuit court of the county where he is confined shall institute a careful investigation. He shall call two or more reputable physicians and other credible witnesses, and the prosecuting attorney, to aid in the examination, and if it be deemed necessary to call a jury for that purpose, is fully empowered to compel the attendance of witnesses and jurors. If it is satisfactorily proved that such person is insane, said judge may discharge such person from imprisonment and order his safe custody and removal to the state asylum, where such person shall remain until restored to his right mind, and then, if the said judge shall have so directed, the superintendent of said asylum shall inform the said judge and prosecuting attorney, so that the person so confined may within sixty days thereafter be remanded to prison and criminal proceedings be resumed, or he be otherwise discharged. If any such person be sent to said asylum, the county from which he is sent shall defray all expenses of such person while at the asylum for a period of two years, and the expense of returning home to such county if his discharge is effected during such period. If he shall not be discharged from the said asylum until after his transfer to the state shall have been effected, under the provisions of a subsequent section, the expenses of his return to said county shall be paid by the state of Michigan. The county or state may recover the amount so paid from the person's own estate, if he have any, or from any relative, town, city or county that would have been bound under existing laws to provide for and maintain him elsewhere.—Public Acts, 1905, sec. 19, p. 344.

*Insane entitled to writ of habeas corpus*.—Anyone in custody as an insane person in any asylum, home or retreat, is entitled to a writ of *habeas corpus*, upon a proper petition to the circuit court of the county in which said asylum, home or retreat is situated, made by him or some friend in his behalf. Upon the return of such writ, the fact of his sanity shall be inquired into and determined. The medical history of the patient, as it appears in the books of the asylum, home or retreat, shall be given in evidence, and the superintendent or medical officer in charge of the institution wherein such person is held in custody, and any other proper person, shall be sworn touching the mental condition of such person.—Public Acts, 1903, sec. 35, page 339.



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### MINNESOTA.

*Criminal responsibility of insane persons.*—No person shall be tried, sentenced or punished for any crime while in a state of idiocy, imbecility, lunacy or insanity, so as to be incapable of understanding the proceedings or making a defense; but he shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act he was laboring under such a defect of reason, from one of said causes, as not to know the nature of his act, or that it was wrong.—Revised Laws, 1905, sec. 4756.

*Insanity, etc., of defendant.*—Whenever any person under indictment or information, and before or during the trial thereon and before verdict is rendered, shall be found to be insane, an idiot, or an imbecile, the court in which such indictment or information is filed, shall forthwith commit him to the proper state hospital or asylum for safe keeping and treatment; and whenever at such time any such person shall, in addition, be found to have homicidal tendencies, such court shall forthwith commit him to the asylum for the dangerous insane for safe keeping and treatment; and in either case such person shall be received and cared for at the institution to which he is thus committed until he shall recover, when he shall be returned to the court from which he was received to be placed on trial upon said indictment or information.

*Acquitted on ground of insanity.*—Whenever during the trial of any person on an indictment, or information, such person shall be found to have been, at the date of the offense alleged in said indictment, insane, an idiot, or an imbecile, and is acquitted on that ground, the jury or the court, as the case may be, shall so state in the verdict, or upon the minutes, and the court shall thereupon, forthwith, commit such person to the proper state hospital or asylum for safe keeping and treatment; and whenever in the opinion of such jury or court such person, at said date, had homicidal tendencies, the same shall also be stated in said verdict, or upon said minutes, and said court shall thereupon forthwith commit such person to the hospital for the dangerous insane for safe keeping and treatment; and in either case such person shall be received and cared for at said hospital or asylum to which he is thus committed. No such person so acquitted shall be liberated therefrom, except upon the order of the court committing him thereto and until the superintendent of the hospital or asylum where such person is confined shall certify in writing to such committing court that, in his opinion, such person is wholly recovered and that no person will be endangered by his discharge. *Provided*, that nothing herein shall be construed as preventing the transfer of any person from one institution to another by the order of the board of control, as it may deem necessary.—Laws of 1907, c. 358, sec. 1. (Amendments of secs. 5375 and 5376 of Revised Laws, 1905).

### MISSISSIPPI.

*Insane person charged with crime.*—When a prisoner shall be brought before any conservator of the peace, charged with the commission of an offense, and, in the course of the investigation, it shall appear that the prisoner was insane when the offense was committed, and still is insane, he shall not be discharged, but the conservator of the peace shall remand the prisoner to custody, and forthwith report the case to the chancellor or clerk of the chancery court, whose duty it shall be to proceed with the case according to the law relating to persons of unsound mind.—Code of 1906, sec. 1538.

*Writ de lunatico inquirendo.*—The chancery courts have jurisdiction of writs of lunacy, to be exercised by the clerks at any time, subject to the approval of the court. Any relative of a lunatic or insane person may procure him to be so adjudged; but if the relations and friends of any lunatic or insane person shall neglect or refuse to place him in an insane hospital, and shall permit him to go at large, the clerk of the chancery court shall, on the application, in writing and under oath, of any citizen, direct the sheriff, by writ of lunacy, to summon the alleged lunatic or insane person to contest the application, and six freeholders to make inquiry thereof, on oath, and the result of the inquisition to return to the clerk. The jury shall be impaneled in the presence of the clerk, and shall be charged by him to make due inquest as to the particulars indicated in the two following sections.—Code of 1906, sec. 3219.

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*When grand jury do not indict because of insanity, what shall be done, etc.*—When any person is held in prison or on bail charged with an offense, and the grand jury shall not find a true bill by reason of the insanity of the accused, the grand jury shall certify the fact to the circuit court, and state whether such insane person be in such condition as to endanger the security of persons or property and the peace and safety of the community. And if the grand jury report such unsoundness of mind and such danger, the court shall forthwith give notice of the case to the chancellor or clerk of the chancery court, whose duty it shall be to proceed with such person and his estate according to the law relating to persons of unsound mind.

*When acquitted because of insanity.*—When any person shall be indicted for an offense, and acquitted on the ground of insanity, the jury rendering the verdict shall state therein such ground, and whether the accused have since been restored to his reason, and whether he be dangerous to the community; and if the jury certify that such person is still insane and dangerous, the judge shall order him to be conveyed to and confined in one of the state asylums for the insane.—Code of 1906, secs. 1539 and 1540.

## MISSOURI.

*Insane, jury to try subsequent to indictment.*—If any person indicted for any crime in this state shall, after his indictment and before his trial on such charge, become insane, and the circuit or criminal court wherein such person stands charged shall have reason to believe that such person has so become insane, it shall be the duty of such court to suspend all further proceedings against such person under said charge, and to order a jury to be summoned to try and decide the question of the insanity of such person, and said judge shall notify the prosecuting attorney of the pendency of such inquiry. The alleged insane person shall be notified of such proceeding, unless the court order such person to be brought before it.

*Jury to decide insanity—costs, how paid.*—If upon such inquiry the said jury shall become satisfied that such person has so become insane, they shall so declare in their verdict, and the court shall, by proper warrant to the sheriff, marshal or jailer, order such person to be conveyed to the lunatic asylum and there kept until restored to reason. And such person shall be thereupon disposed of, and the costs and expenses of conveying him to said asylum and of his support and maintenance at said asylum shall be taxed, paid and collected as now provided by law in cases of the insane poor; *Provided*, if such person shall have property, the costs shall be paid out of his property by his guardian.

*Restored to reason, prosecution continued.*—When such person shall be restored to reason, he shall be returned to the county whence he came, and the proceedings against him shall be continued and be prosecuted, and his trial had as though no such inquiry and proceedings thereon, as herein provided, had been made, and if upon such inquiry it shall be determined that said person has not so become insane as aforesaid, the criminal proceedings against him shall be continued and prosecuted, and his trial had in the same manner as though no such inquiry had been made and had.—Revised Statutes, 1909, secs. 5207-5209.

*Jury trial to determine sanity of person charged with crime.*—When a person, tried upon indictment for any crime or misdemeanor, shall be acquitted on the sole ground that he was insane at the time of the commission of the offense charged, the fact shall be found by the jury in their verdict, and by their verdict the jury shall further find whether such person has or has not entirely and permanently recovered from such insanity; and in case the jury shall find in their verdict that such person has so recovered from such insanity, he shall be discharged from custody; but in case the jury shall find such person has not entirely and permanently recovered from such insanity, the prisoner shall be dealt with as provided in the two following sections.

*Prisoner may be sent to hospital, when—costs to be paid from estate—to furnish superintendent copy of order.*—If the prisoner is not a poor person, and the court is satisfied, from the nature of the offense or otherwise, that it would be unsafe to permit the prisoner to go at large, an order shall be entered of record that he be sent to a state hospital, designating it, and further requiring

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the sheriff or other ministerial officer of the court, with such assistance as may be specified in the order, to convey such prisoner to the hospital, after first ascertaining from the superintendent that such prisoner will be received into the hospital, and until the receipt of such information, to keep such prisoner in the county jail, poorhouse or other safe custody; and further, that the cost which may accrue in carrying into effect this order, and all expenses for the support and maintenance of such person whilst in the care and custody of the officer and at the hospital, shall be paid out of the proceeds of the estate of such person. And the court shall have power, at each succeeding term, to tax up, so long as it may be necessary, such cost and expenses as may have accrued since the preceding term, and cause the same to be levied and collected by execution; and the officer collecting the same shall pay to the treasurer of the hospital, and to such other persons as may be entitled thereto, their respective amounts due. The clerk of the court shall furnish a copy of the order of the court, under his official seal, to be lodged with the superintendent, upon the admission of the prisoner into the hospital, and issue a warrant upon said order to the officer named in said order as near as may be of the form specified in section 1424.—Revised Statutes, 1909, secs. 1430 and 1431.

### MONTANA.

Sections 9520-9526 of the Revised Codes, 1907, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Verdict.*—When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity."—Revised Codes, 1907, part of sec. 9322.

*Proceedings on acquittal on ground of insanity.*—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county, to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the county attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.—Revised Codes, 1907, sec. 9338.

### NEBRASKA.

*Proceedings where the accused becomes insane.*—A person that becomes lunatic or insane after the commission of a crime or misdemeanor ought not to be tried for the offense during the continuance of the lunacy or insanity. \* \* \* In such case it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of the impanelling, insane or lunatic.—Cobbey's Annotated Statutes, 1911, sec. 2614.

*Criminal insane, disposition of.*—That any person prosecuted for an offense may plead that he is not guilty by reason of insanity or mental derangement; when the defense is insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict. The court must thereupon order the defendant to be committed to the state hospital for the insane, until he becomes sane and is discharged by due process of law. *Provided*, that the defense of insanity may be raised under a general plea of not guilty.—Cobbey's Annotated Statutes, 1911, sec. 2614x1.

*Insane entitled to benefit of habeas corpus.*—All persons confined as insane, dipsomaniacs, inebriates or as persons addicted to the excessive use of morphine, cocaine or other narcotic drugs, shall be entitled to the benefit of a writ of *habeas corpus* and the question of insanity, dipsomania, inebriety or the excessive use of morphine, cocaine or other narcotic drugs, shall be decided at the hearing, and if the judge shall decide that the person is insane, or a dipsomaniac, an inebriate or an excessive user of morphine, cocaine or other narcotic drugs, such decision shall be no bar to the issuing of a writ a second time

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whenever it shall be alleged that such person has been restored to reason or has been cured from dipsomania, inebriacy or of the excessive use of morphine, cocaine or other narcotic drugs, but no court shall have jurisdiction to hear such writ until the clerk of the district court of the county in which the board of commissioners on insanity had the matter of detaining such person under consideration has been given reasonable notice of the time and place of such hearing. That upon the hearing of the writ of *habeas corpus* herein provided for, if it shall appear that the board of commissioners on insanity had jurisdiction of the patient, such patient shall not be released from custody by any court in this state except for the reason that such person has been restored to reason or cured of being a dipsomaniac, or inebriate or of the use of morphine, cocaine or other narcotic drugs. *Provided*, however, that if the proceedings of such board of commissioners are so irregular as not to justify the detention of such person, then such person shall be by order of court returned to the sheriff of the county from which committed, there to be proceeded with according to law before the board of commissioners on insanity of such county.—Cobbey's Annotated Statutes, 1911, sec. 10088.

## NEVADA.

Sections 7385-7393 of the Revised Laws of 1912 prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Acquitted by reason of insanity, confinement in the hospital for mental diseases.*—Where on a trial a defense of insanity is interposed by the defendant and he is acquitted by reason of that defense the finding of the jury shall have the same force and effect as if he were regularly adjudged insane as now provided by law, and the judge thereupon shall forthwith order that the defendant be confined in the hospital for mental diseases until he be regularly discharged therefrom in accordance with law.—Revised Laws, 1912, sec. 7217.

## NEW HAMPSHIRE.

*Procedure when criminal pleads insanity.*—When a person is indicted for any offense, or is committed to jail on any criminal charge to await the action of the grand jury, any justice of the court before which he is to be tried, if a plea of insanity is made in court, or said justice is notified that such plea will be made, may, in term time or vacation, order such person into the care and custody of the superintendent of the state asylum for the insane, to be detained and observed by him until further order of the court, or until such person shall have been ordered discharged from said New Hampshire state hospital by its trustees upon a report to them by said superintendent that such person is not insane.—Laws of 1911, chap. 13, sec. 1.

*Insanity to be certified by grand jury.*—Whenever the grand jury shall omit to find an indictment against a person, for the reason of insanity or mental derangement, or a person prosecuted for an offense shall be acquitted by the petit jury for the same reason, such jury shall certify the same to the court.

*Admitted or found by verdict.*—Any person prosecuted for an offense may plead that he is not guilty by reason of insanity or mental derangement, and such plea may be accepted by the state's counsel, or may be found true by the verdict of the jury.

*Court may commit in case of.*—In either of the cases aforesaid, the court, if they are of opinion that it will be dangerous that such person should go at large, may commit him to the prison or to the asylum for the insane, there to remain until he is discharged by due course of law.

*May be discharged or transferred.*—The governor and council or the supreme court may discharge any such person from prison, or may transfer any prisoner who is insane, to the asylum for the insane, to be there kept at the expense of the state, whenever they are satisfied that such discharge or transfer will be conducive to the health and comfort of the person and the welfare of the public.—Public Statutes and Session Laws, 1901, chap. 255, secs. 1-4.

(To be concluded in the next issue.)